

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

MARKEITA DESHUN ECHOLES

§

VS.

§

CIVIL ACTION NO. 5:08cv184

KEITH ROY

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Markeita Deshun Echoles, an inmate formerly confined at the Federal Correctional Institution in Texarkana, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed because the claims do not contest the fact or duration of confinement. Additionally, the Magistrate Judge has recommended dismissal because the claims asserted are repetitious of the claims asserted in civil action no. 5:08cv207, styled *Echoles v. Roy*.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections should be overruled.

Petitioner's claims do not attack the fact or duration of his confinement; thus, the claims are not properly presented in a petition for writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S.Ct. 1827, 1833, 36 L.Ed.2d 439 (1973). Further, petitioner has filed a separate civil rights action asserting the same claims presented in this petition. Accordingly, petitioner may not relitigate the same claims by pursuing this action. Therefore, dismissal of the above-styled action is appropriate.

The dismissal of this action is without prejudice to petitioner's ability to pursue his claims in civil action no. 5:08cv207. To ensure petitioner has copies of the documents submitted in this action for use in the civil rights action, the Clerk should forward a copy of all motions and pleadings filed in this petition.

ORDER

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. It is

ORDERED that the Clerk of Court is **DIRECTED** to forward to petitioner a copy of all motions and pleadings filed in this petition. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 3rd day of August, 2009.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE